



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Aydin Corporation  
**File:** B-232003  
**Date:** November 25, 1988

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### **DIGEST**

Protest that procurement must be disturbed because sensitive information was leaked outside the government is denied where the evidence currently available points only to an unsuccessful offeror as a possible recipient of the leaked information and the record contains statements by the two awardees that they did not receive the information.

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### **DECISION**

Aydin Corporation protests the award by the Navy's Space and Naval Warfare Systems Command (SPAWAR) of contracts to Canadian Commercial Corporation (CCC) and Loral Terracom under request for proposals (RFP) No. N00039-87-R-0271(O). The basis for the protest is that it appears a high-level SPAWAR official may have leaked sensitive information related to this procurement to someone outside the government. Aydin contends that because it is not known whether either of the awardees improperly received this information, the Navy should either recompetes its requirement or allow Aydin to compete for a follow-on production contract. We deny the protest.

The contracts awarded to CCC and Loral Terracom are for the development of a prototype AN/MRC-139 digital wideband transmission system, which is basically a mobile radio set to be used as part of a telephone switching system. The RFP provided that the Navy intended to award at least two such development contracts in Phase I of this procurement and required offerors to submit firm, fixed, not-to-exceed prices for a Phase II production contract. Thirty days prior to completion of operational testing of the prototypes, the development contractors are to submit final prices that the Navy will use in selecting the production contractor.

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The Navy received four offers in response to the RFP, all of which the agency found after an initial evaluation to be technically acceptable, though each had certain weaknesses. The Navy held discussions with all four offerors and invited them to conduct technical demonstrations. Upon further review at the conclusion of the demonstrations, the Navy determined that the proposals of two of the offerors, Aydin and Hazeltine Corporation, were technically unacceptable, and excluded these firms from the competitive range. The Navy solicited best and final offers from CCC and Loral Terracom and awarded Phase I development contracts to these offerors on October 30, 1987.

On July 1, 1988, The Washington Post reported that the United States District Court for the Northern District of Texas had unsealed an affidavit that had been filed in support of requests for search warrants in connection with Operation Ill Wind, a criminal investigation of alleged improprieties in a number of Department of Defense (DOD) procurements, and that one of the procurements mentioned in the affidavit was one involving "radios for the Navy." After obtaining a copy of the affidavit, Aydin filed this protest. The affidavit, prepared by a special agent of the Federal Bureau of Investigation based on information obtained through wiretaps and other means, alleges that a high-level SPAWAR official may have provided sensitive procurement information to a private consultant who in turn may have passed the information to another consultant in return for money. With respect to the MRC-139 system, the affidavit states that the first consultant informed the second that "the initial proposals were in and that the company [the second consultant] was working for had the worst proposal price-wise and was also rated poorly on the technical aspects of its proposal." Hazeltine had the lowest rated price proposal.

In addition, other court documents indicate that the Navy's acquisition plan for the MRC-139 may have been released outside the government. A search warrant issued by the United States District Court for the District of Columbia listed the acquisition plan among the documents authorized to be seized from the premises of the second consultant. Similarly, the United States District Court for the Eastern district of New York authorized the seizure of the acquisition plan in a search warrant for the offices of Hazeltine.

Aydin's position in this protest is that information currently available strongly suggests that this procurement has been tainted by fraud. In particular, Aydin notes that it appears the Navy's acquisition plan--which Aydin points out ordinarily contains sensitive information concerning the

agency's budget estimates, milestones and source selection procedures--was leaked outside the government, but it is not known when this leak occurred or who ultimately received the information. In this connection, Aydin notes that the government obtained a search warrant for the offices of Loral Corporation, the parent company of Loral Terracom. Aydin contends that until the Navy can completely remove the "cloud of suspicion" overhanging this procurement, the agency should take remedial action by recompeting Phase I or by allowing it to compete in Phase II of this procurement.

The Navy argues that remedial action is not required here because there is no evidence to indicate that disclosure of sensitive procurement information was made to any firm other than Hazeltine. In this regard, the Navy notes that neither CCC nor Loral Terracom has been identified as a target of the Ill Wind investigation and that neither firm is among those required to execute a certificate of business ethics, which DOD requires of firms whose offices have been searched in connection with the investigation. (The Navy admits, however, that three Loral Corporation subsidiaries other than Loral Terracom are required to execute the certificate.) In addition, the Navy points out that both CCC and Loral Terracom have submitted statements to this Office specifically denying that they received any procurement-sensitive information through improper channels.


The Navy also points out that the proposals of both CCC and Loral Terracom were clearly superior to Aydin's. While Aydin offered the lowest cost, Aydin's overall score considering both cost and technical factors was 61.9 on a 100-point scale. The proposal of CCC received an overall rating of 83.4, and that of Loral Terracom received a rating of 85.4.

Fraud or other misconduct in the procurement process undermines public confidence in the integrity of the procurement system. Allegations of impropriety must be investigated vigorously and fully, and corrective action must be taken when appropriate. Here, an investigation is still being conducted by the responsible agencies: the Federal Bureau of Investigation, the Naval Investigative Service, and the Department of Justice. Our function in the context of a protest is not to supplant those efforts, but rather it is to decide whether available evidence dictates that a particular procurement must be disturbed.

In this case, the information currently available points only to Hazeltine as a possible recipient of improperly disclosed, procurement-sensitive information. There is no basis for concluding that either CCC or Loral Terracom

obtained their contracts with the Navy through improper means or that the alleged improper disclosures contributed in any way to Aydin's exclusion from the competitive range. Under these circumstances, we can not say that the Navy abused its discretion in concluding that what has been alleged to date does not require corrective action. Of course, at such time as further information becomes available that would warrant a different conclusion, appropriate action should be taken.

The protest is denied.

  
James F. Hinchman  
General Counsel